

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELBERTA LIEBERMAN,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	96-523
FAMILY COURT, STATE OF DELAWARE,)	
)	
Defendant.)	

Deposition of ELBERTA LIEBERMAN taken pursuant to notice at the offices of Morris James Hitchens & Williams, LLP, 222 Delaware Avenue, Tenth Floor, Wilmington, Delaware, beginning at 9:00 a.m. on Friday, June 10, 2005, before Ann M. Calligan, Registered Merit Reporter and Notary Public.

APPEARANCES:

EDWARD M. McNALLY, Esquire
MORRIS JAMES HITCHENS & WILLIAMS, LLP
222 Delaware Avenue
P.O. Box 2306
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on behalf of the Plaintiff,

MARC P. NIEDZIELSKI, Esquire
Department of Justice
Carvel State Office Building
802 North French Street
Wilmington, Delaware 19801
on behalf of the Defendant.

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1 ELBERTA LIEBERMAN,
2 the witness herein, having first been
3 duly affirmed on oath, was examined
4 and testified as follows:

5 EXAMINATION

6 BY MR. NIEDZIELSKI:

7 Q. Good morning, Mrs. Lieberman.

8 A. Miss.

9 Q. Miss Lieberman, we've been here with you. You
10 met me before. You've been deposed before.

11 A. Yes.

12 Q. Do I need to go through any of the instructions
13 or do you think you understand?

14 A. I think I understand. Thank you.

15 Q. If at any time you don't understand a question
16 I ask you, just let me know and I'll try to rephrase
17 the question. Okay?

18 A. Okay.

19 Q. What I'm going to do initially, Ms. Lieberman,
20 is go through these documents that were produced after
21 your other deposition, your prior deposition, and I'm
22 going to ask you to identify them. Okay?

23 A. Okay. And let me make sure I don't knock
24 anything over here.

1 I didn't go in any particular order here.

2 I think -- I may. I'm not sure.

3 Q. Now, you see on the corner of these documents
4 there's a number?

5 A. Yes.

6 MR. McNALLY: Excuse me. Please wait
7 until he's done asking the question. All right?
8 Please.

9 Q. Do you see those numbers?

10 A. Yes.

11 Q. And do you see it's a BL 0803?

12 A. Yes.

13 Q. And does it appear to you that each page has
14 been marked sequentially?

15 A. I have not had a chance to check numbered ones,
16 so I can't -- but I assume -- my lawyer tells me it
17 was done, so I trust that it was.

18 Q. Just take a few minutes. Just go through it
19 and at least see whether in fact it seems that the
20 sequence is unbroken.

21 MR. McNALLY: That was certainly our
22 intent. I'll stipulate if there are any cases where
23 the sequence was broken, it was inadvertent.

24 MR. NIEDZIELSKI: Let me make this easy.

1 Will you stipulate there that the documents here are
2 Bates stamped BL 803 through BL 1283?

3 MR. McNALLY: Sure.

4 BY MR. NIEDZIELSKI:

5 Q. Now, the first document that's marked BL 0803,
6 what is that document?

7 A. Okay. This is what was called -- used to
8 have -- it's an activity report. Used to have a title
9 at the top. Didn't by this time?

10 Q. Now is this typed or hand filled out?

11 A. It was -- part of it is typed and part of it is
12 hand filled out.

13 Q. Would you fill these out?

14 A. Most of the time, yes. Not all of the time,
15 but most of the time.

16 Q. Now, there's a date that appears on the top of
17 these.

18 A. Yes.

19 Q. And for instance, it says, August 1984 on BL
20 0803, correct?

21 A. I think it was '94.

22 Q. I am sorry. '94. It's upside down. Where
23 would you get these documents from?

24 A. That's in another -- to make this up, that's in

1 another one of those. It was called the handwritten
2 mediation calendars.

3 Q. We'll refer to these as a category, and these
4 would be called mediation statistics and daily
5 activity reports?

6 A. This is the last step of the process before you
7 do statistics.

8 Q. In other words --

9 A. Compiling these.

10 Q. Odds are we're going to go to those other
11 documents probably.

12 And then you, from those other documents,
13 you generate these documents, correct?

14 A. That's correct.

15 Q. And part of them are typed. Are they typed by
16 you at the time that these are prepared?

17 A. What happened was I made a mistake. They had
18 just taught us the computer, and there was a template,
19 and I was supposed to make a copy of the template
20 rather than type on the template. And I spent five
21 hours on a Friday typing in all of my cases and lost
22 all that work. So they let me do it a different way
23 because I didn't have another five hours to put into
24 typing all the cases in. I did type this in.

1 MR. McNALLY: This being this particular
2 document.

3 THE WITNESS: This particular -- these
4 that you see.

5 Q. The left three columns that are typed in there
6 would be names?

7 A. Mm-hmm.

8 Q. The first two columns in the third column there
9 would be --

10 A. And this is cropped. This one, the respondent
11 was first. Second column was petitioner. Third is
12 the court file number. The next one is the first
13 mediation date that was scheduled, the type of the
14 matter, and if it was rescheduled, to what date.

15 MR. McNALLY: You're referring to
16 BL 087, not to BL 083, right?

17 THE WITNESS: Yes. Because BL 803, it got
18 cropped, and it was -- the list wasn't on top of what
19 the columns represented, so I made sure I was telling
20 you accurately by looking at that one.

21 Q. I see what you're saying. You're saying the
22 label at the top wasn't reproduced on 803?

23 A. Mm-hmm.

24 Q. Now, so you would type in the four columns and

1 then -- but there also appears to be handwriting. Is
2 that your handwriting?

3 A. Yes.

4 Q. Would that be true throughout all these
5 reports, that would be your --

6 A. Practically all. At one point there was a
7 mediator who didn't have anything to do, and she was
8 asked and hand printed some of these.

9 Q. And you indicated that this is a subsequent
10 step to gathering statistics and making the report,
11 correct? In other words, there's an earlier step that
12 you go through?

13 A. That's correct.

14 Q. Can you just tell me generally, would you do
15 these individual reports on a weekly basis, a monthly
16 basis?

17 A. It would depend on other factors. It certainly
18 had to be done on a monthly basis, but often I would
19 do it throughout the month, work on it throughout the
20 month.

21 Q. At some point, for instance -- now, I'm
22 referring to BL 0843 -- it appears that the form is
23 somewhat different here.

24 A. That's correct. This is -- this is when we

1 had -- I'm trying to think. The process changed
2 throughout. Like this is when we had on the form when
3 we got it as a new matter. That changed in what they
4 wanted when it was typed. I did better when it was
5 handwritten. And it also changed -- it could change
6 in terms of whether -- over the months it would change
7 over whether they wanted all of the same type of
8 matter together or. You know, and then -- so if you
9 saw earlier ones, there would be a whole set for
10 custody, then ancillary custody, and down the line.

11 Q. You had to do them at least monthly. These
12 monthly reports go from August '94 back to -- are
13 these the earliest ones we have, March of '91? Is
14 that correct?

15 A. That's correct. And I do have to say that
16 these were the documents that Family Court gave my
17 friend's father. I don't have totally complete
18 reports. I did the best I could.

19 Q. I am sorry. These are documents that your
20 friend --

21 A. After Family Court made me leave, I called them
22 and told them I -- well, I called that day and said I
23 needed my documents, and someone -- I believe it was
24 my supervisor Dave Weiss -- boxed everything that

1 was -- because I made copies of everything, so I had
2 records. So I cannot promise -- like, for instance, I
3 know that February of '93, the statistics are missing.
4 I'm not going to say I have them when I don't.

5 Q. So these were provided to you by Mr. Weiss
6 after you left?

7 A. Or somebody.

8 Q. But you made a request to Mr. Weiss?

9 A. I made a request to Kathi Donofrio, and his
10 supervisor at the time and the deputy director from
11 New Castle County, and I explained that my friend's
12 father was willing to come with a truck at an agreed
13 upon time and would have everything boxed of mine, and
14 in the years since, I've worked on putting them
15 together.

16 Q. And so these would have been your own records
17 kept in your desk?

18 A. In my office, yes.

19 But they are not totally complete.

20 Q. I'm going to show you another set of documents
21 in an accordion file. And the accordion file is
22 marked "typed mediation calendars," correct?

23 A. That's correct.

24 Q. And it has a date it was produced to me

1 November 17th, 2004, and it has those Bates numbers,
2 BL 1284 through BL 1541.

3 MR. NIEDZIELSKI: I take it you will
4 stipulate, Mr. McNally, that that, in fact, is what is
5 in that.

6 MR. McNALLY: Sure.

7 BY MR. NIEDZIELSKI:

8 Q. And would you just explain, what are these?

9 A. Okay. This is -- we are going from the most
10 recent back. Okay? So in terms of developing
11 statistics, this was a calendar that was typed off the
12 handwritten mediation calendar I expect you'll go to
13 next, and usually, the handwritten calendar for this
14 date -- I mean the typed calendar for -- excuse me --
15 for this date would have the same cases that were on
16 the handwritten calendar. But that was handwritten by
17 the clerk who was assigning cases. And so -- what do
18 you want me to explain first about this calendar?

19 Q. Who makes this document? How is this made?

20 A. This was made by the clerks in the mediation
21 unit.

22 Q. It would appear typed?

23 A. Yes.

24 Q. And then there was handwriting on it?

1 A. Yes.

2 Q. Whose handwriting would that be?

3 A. Usually the mediator's.

4 Q. So, for instance --

5 A. These are my handwriting. Sometimes, if
6 someone else handled a case for each other, sometimes
7 you see a different handwriting.

8 Q. Okay. For instance, were these -- did each
9 mediator get their own calendar or was this a calendar
10 for all mediators?

11 A. There were two pages of this calendar.

12 Q. Okay.

13 A. And I believe -- you see, I was not clear with
14 Mr. McNally that not all of this that you got was
15 correctly organized. But, I think this is mostly -- I
16 did everything in reverse order like Family Court did.
17 So I believe you'll find them in reverse chronological
18 order by month.

19 Q. Then these mediation calendars appear to -- the
20 most recent one on top is October 3rd, 1994, and
21 that's Bates stamp BL 1284?

22 A. Yes.

23 Q. And the one at the very end appears to be April
24 of 1993, correct?

1 A. Yes.

2 Q. And it was Bates stamped -- just so we are
3 accurate about that, the bottom, what's that number
4 Bates stamped on that one for April 9?

5 A. BL 1537.

6 Q. So after, for instance, you or another mediator
7 would handle a case, would you go out and make
8 notations on the calendar?

9 A. Yes. Except that -- just for one thing for you
10 to know, I noticed when I was reviewing them, he would
11 put the calendar away before the final mediation was
12 done. And so sometimes what was done on the last, the
13 fifth mediation -- I think it was five -- is not
14 written in there. And the other thing you don't know
15 is, because you don't have the originals, which I
16 have, is what I added later to make this more complete
17 from my copies of the dispositions.

18 Q. You have the originals of these?

19 A. I have my original copy.

20 Q. Well, explain to me --

21 A. I don't have the original calendars. We've
22 asked you for them, and we understand they were
23 destroyed. So each month I would do statistics from
24 this, and fortunately I -- we had a -- I had time and

1 did -- usually I did it at the end of the month, but
2 fortunately I did this, copied up until the 13th of
3 October, or I would have nothing of this to offer you.

4 Q. So I'm just trying to get this clear. So the
5 clerk would generate this mediation calendar?

6 A. The typed form.

7 Q. Each day? Each day there would be one?

8 A. Yes. And it would be two pages, one -- and it
9 was alphabetical. You know, Lieberman. So the other
10 mediators was -- you know, Judy Sullivan would be on
11 the next page.

12 Q. And then each mediator would get a copy of that
13 calendar as well, correct?

14 A. (Indicating.)

15 Q. Or no?

16 A. No. I made these copies. We were allowed to
17 copy them.

18 Q. After you were done mediation, you would go
19 back out. Where was this calendar kept while the
20 mediations were going on?

21 A. On the front desk.

22 Q. So you would go back out to the front desk and
23 make notations at that time?

24 A. Right. Right. And if you see checks -- you're

1 not asking that.

2 Q. If you see checks, what does that mean?

3 A. If you see checks, it means it's the -- to all
4 the paperwork that the state-funded mediators were
5 required to do was done on that day before they took
6 the calendar away.

7 Q. So a check mark after comments meant all the
8 paperwork that you were expected to do --

9 A. Mm-hmm.

10 Q. -- was done?

11 A. If it was still there when I got it done. Like
12 they kept taking it away early, but that's...

13 Q. You mean if this mediation calendar --

14 A. Mm-hmm. Right.

15 Q. Now, was this a copy of your copy that you
16 maintained?

17 A. Yes.

18 Q. So even though they may have taken away the
19 mediation calendar, you would still be able to make
20 notations on your calendar?

21 A. Right.

22 Q. You would do that. So even, for instance, at
23 4:30 you could make a notation on your own calendar?

24 A. That's correct. Mm-hmm.

1 Q. Like you said, this is the initial starting
2 point for you to gather your statistics, correct?

3 A. No.

4 Q. No?

5 A. No. Sorry.

6 Q. What initial documents did you use to make the
7 statistics?

8 A. The initial ones were the handwritten ones of
9 the mediation calendars. It was another --

10 Q. I believe that's probably --

11 A. The next one, is this what you were speaking
12 of?

13 Q. Yes. These are the handwritten mediation
14 calendars?

15 A. Oh, dear. See, I'm not sure what inadvertently
16 was given you. I can't promise that some of them are
17 not out of order.

18 MR. McNALLY: He didn't ask you that,
19 though.

20 A. This is the handwritten calendar, yes.

21 Q. And file that I received this in indicates that
22 the documents in there are Bates stamped BL 1542
23 through BL 1774?

24 A. Right.

1 Q. And if you look, you can verify that. You see
2 the first one there?

3 A. Okay. Sure. Yeah. Correct.

4 Q. How was this handwritten mediation calendar
5 made?

6 A. Okay. It was made in a couple ways. Basically
7 there was a clerk who was assigned to, you know,
8 schedule the matters. These are ancillary matters or
9 petitions for mediators. So Tara Barnes was her name
10 when I left. These numbers are something different.
11 Okay. So these weren't there. I added those at the
12 end. What I would get is for November 1st, and I
13 would copy these. This would tell me that I had a
14 custody petition scheduled for November 1st, Tuesday,
15 of '94. And these were the five matters that were
16 scheduled for me, and these were the dates that Tara
17 Barnes or I or somebody else scheduled that matter for
18 me.

19 Q. Just so we are clear on the record, what you
20 are pointing to the right side is a column called
21 disposition, correct?

22 A. Yes.

23 Q. That represents, you indicated, the date?

24 A. Yes.

1 Q. In which you scheduled this particular matter
2 to be heard on November 1st, for instance, 1994?

3 A. I didn't. Tara Barnes did. Mm-hmm.

4 Q. Now, you indicated that next to these numbers,
5 under your name --

6 A. Yes.

7 Q. -- are some other numbers. What do they
8 signify?

9 A. This was a chart I made up for Mr. McNally in
10 2000, I believe, and it was done without names. I
11 wanted -- I was -- I later made that one up to be more
12 complete. The first one -- this refers to number 24
13 on the list I did for Mr. McNally, and it didn't have
14 all the information he wanted you to have or the Court
15 to have. So these don't count any more. But that's
16 why they are there.

17 Q. Were they used to identify individuals in lieu
18 of using their names?

19 A. Yes. I also had the court file number.

20 Q. So when you did this report for Mr. McNally,
21 did you just use the court file number?

22 A. Yes. And the other information, but not the
23 names because I thought we weren't supposed to give
24 the names.

1 Q. Now, in sequence, this mediation calendar that
2 we've just been discussing is handwritten?

3 A. Yes.

4 Q. We just went through another set of documents
5 which were mediation calendars but they were typed.

6 A. So this is first, then second.

7 Q. This was initially done by the clerk. Did you
8 input those dates when they get scheduled from
9 mediation?

10 A. Yes. These mean these are now assigned to me
11 and it was the Court's way to keep track of all
12 matters. So they were assigned to somebody somewhere.
13 So, for instance, if I may, I think this is a good
14 example right here. These -- this one, I see
15 September 1st here. I don't see the October 1st in
16 this file. And I believe it's in a separate file as I
17 saw it. This one's a good example, Mr. Niedzielski.

18 You see, this one was assigned to me and
19 of course it -- the copier cropped off the date. It
20 was two matters that were assigned on November 21st.
21 But it was assigned -- I can't remember the date that
22 I estimated that it was or knew it had been scheduled
23 or estimated. It had been scheduled -- for instance,
24 she was scheduling on -- for November 3rd other --

1 which was another November date that I -- the only one
2 I had. She was scheduling cases on September 21st and
3 26th. So this was scheduled in September as I recall.
4 I can't remember specifically. Okay.

5 So this is another kind of document I
6 could have gotten the information about the matters
7 that were now on my calendar but certainly I had not
8 even mediated yet. But I was to have them on my
9 statistics.

10 Q. Okay. Well, for instance, this document, which
11 is BL 1545, it's entitled "scheduling instructions,"
12 correct?

13 A. Mm-hmm.

14 Q. And it says scheduled for November 21st, 1994,
15 at 1:30?

16 A. Mm-hmm.

17 Q. And it requires three hours, correct?

18 A. Right.

19 Q. Was it scheduled for November 1st however?

20 A. No. I'm just showing you --

21 Q. Okay.

22 A. -- that, you see, actually this is what Tara
23 Barnes had or made up. I'm trying to remember. That
24 looks like her handwriting. She made these up.

1 Q. Okay.

2 A. All right? And so then, from this she would
3 write this information here. But she wasn't
4 scheduling for November 21st. They did that because
5 there were two attorneys. See, two attorneys. And
6 she had to get -- schedule it when they're available.
7 So that's -- I'm just showing you another way
8 information could have come.

9 Q. Okay. Does information normally come this way
10 through these scheduling instructions?

11 A. No. I would usually get the information from
12 this because this is a summary. That would be a lot
13 more sheets. That stayed with the file.

14 Q. Okay.

15 A. The other thing -- okay -- is I could have
16 scheduled here, but you would see a different
17 handwriting.

18 Q. Well, just so I'm clear on this mediation
19 calendar, it has a date on top?

20 A. Yes.

21 Q. Is that the date these mediations are going to
22 be heard?

23 A. Yes.

24 Q. And on disposition, that's the date they are

1 scheduled for this date, November 1st?

2 A. Correct.

3 Q. Is that the same date they would be assigned to
4 you, for instance?

5 A. Yes.

6 Q. I'm going to hand you a file, and if you could
7 just generally identify what that is, what that stack
8 of documents are?

9 A. Okay. Let's see. Like I said, Mr. McNally --
10 I was not clear with Mr. McNally that some of these
11 things were out of order. And I apologize that they
12 hadn't been put in order before it was given to you.

13 Q. No. That's okay.

14 A. Okay. First of all, on the bottom somewhere,
15 either like, if I did a personal service notice, in
16 this case I generated it. Here's a date issued, so
17 you knew from my computer that -- if you want me to --
18 I'm just showing you the different kind of things that
19 are in here. This shows that, for BL 2101, the
20 document number in this case, on February 25th, I
21 issued a personal service in the civil notice for this
22 person to appear on April 6 of '94. And there's the
23 second page over -- that's not stapled -- where the
24 process server -- it's on the back usually -- would

1 say who he delivered it to, he or she.

2 Okay. Because we could not send something
3 to a judge unless we had proof, if respondent didn't
4 appear, unless we rescheduled it and did personal
5 service notice.

6 Q. So the first time it was scheduled for
7 mediation, it would not necessarily be personal
8 service, correct?

9 A. That's correct.

10 Q. If one or both parties did not show up for that
11 one, then you would do a personal service?

12 A. It depends. Usually if the petitioner was
13 notified at the addressed we gave, the petitioner
14 gave, and the petitioner didn't show, then usually it
15 was dismissed. Usually. And this first page is a
16 wage attachment. We were responsible in these -- this
17 changed over time, but we were responsible for
18 generating the state-funded mediators, not the
19 federally funded, the state-funded mediators had to
20 generate a wage attachment. At this time the masters
21 were signing them. And make sure it went out to the
22 correct place.

23 So these are just showing different things
24 I had to do.

1 I don't want this -- this is separated now
2 from the back that I had.

3 Q. It was marked 20 --

4 A. Yes. 2102. And it's -- 2109 -- well, somehow
5 it got separated, but if is the back -- no. It isn't.
6 I apologize.

7 This goes with this. This 2101 and that's
8 2102.

9 These were, I guess, just showing you the
10 different types of things I was required to do.

11 Q. Let's just make sure we keep them in the
12 numbered order.

13 A. Did I give them back correctly?

14 Q. There you go.

15 Next document is BL 2103. What is this?

16 A. Okay. I tried to keep a copy of what I
17 generated out of each mediation to help me with
18 statistics. It also helped if the Court misplaced it.
19 I had a copy.

20 So what this says is this is a mediation
21 action request which is often what we generated if
22 there was not consent, or if there was a consent order
23 that was final, we didn't have to do this. So this
24 just says -- you want me to go through everything it

1 says?

2 Q. No.

3 A. So on April 5th of '94 at 11:30 I met with the
4 petitioner and respondent. It was important you put
5 in the correct -- correct addresses. And that they
6 had not reached a consent at mediation, the
7 guardianship. You had to put the file date. And this
8 is my assessment, my repeating -- you know, they are
9 going to work with this. Katrina -- I think it was a
10 sister. I forgot to put that in. Catholic Social
11 Services. Whatever.

12 Then on the back, which is upside down,
13 but I said, schedule for a judge, guardianship for a
14 judge, and on February 6th of -- May 6th -- excuse
15 me -- of '94, I apparently wrote that document.

16 Q. Now, how is it you had these copies? You've
17 had these copies. Where did you acquire these copies
18 of these documents?

19 A. That I mentioned about calling Kathi Donofrio
20 and --

21 Q. All these documents here were given to you at
22 the same time?

23 A. And more. Boxes.

24 Q. Okay.

1 A. So this is from April 5th, and I don't know --
2 I thought they -- the ones that you were given --
3 here's April 5th. This is 11:30. Here's 1:30. I
4 don't know if you have them in order or not. I hope
5 so.

6 Q. I got them the way they were given to me.

7 MR. McNALLY: There was no question
8 pending.

9 THE WITNESS: I'm sorry. Thank you.

10 And then these are consent orders. That's
11 an example of a consent order. I signed it.

12 Q. Two parties sign it?

13 A. The parties permanent. So you wouldn't see a
14 mediation action request. There's nothing further to
15 do except maybe a wage attachment that I had to do and
16 the docketing.

17 Q. Now, that file, large stack of documents was
18 marked "4/94 mediations," is that correct?

19 A. That's how it's marked.

20 Q. And it was also marked that it contains Bates
21 stamp BL 2099 through BL 2342?

22 A. That's what it says.

23 Q. We confirmed that the first one is BL 2099?

24 A. Right.

1 Q. And the last one?

2 A. And that's the first page.

3 Q. What's the last page?

4 A. On this?

5 Q. In your file.

6 A. Is BL 2343.

7 Q. Which is marked in the folder, correct?

8 A. Yes.

9 Q. Now, unless I hear differently from you,
10 Miss Lieberman, would it be fair to assume that the
11 rest of these files that you can see marked similar
12 way for mediations for different months --

13 A. Yes.

14 Q. -- contained essentially the same kinds of
15 documents we just discussed?

16 A. Mm-hmm.

17 Q. And again, documents representing your work
18 product, is that fair to say?

19 A. During that month, yes.

20 Q. I don't want to go through them all unless you
21 want me to.

22 A. No.

23 Q. I was given this document yesterday and
24 probably should have this marked as an exhibit.

1 (Lieberman Deposition Exhibit 1 was marked
2 for identification.)

3 BY MR. NIEDZIELSKI:

4 Q. Let me hand you the document that was marked
5 Lieberman 1.

6 A. Yes.

7 Q. Have you seen that document before?

8 A. Yes, I have. I generated it.

9 Q. Can you tell us when you generated it?

10 A. Well, it was -- I'm sorry. I didn't memorize
11 that date. I'm -- on the date of the last deposition,
12 it was already done, your first deposition with me.

13 Q. So you had done it some time prior to that?

14 A. Yeah. Mm-hmm.

15 Q. In addition to being marked as Lieberman 1,
16 it's actually a series of documents, is it not?

17 A. It has a series of pages, and there's one --
18 actually, I think this was attached, this memo, and I
19 just did this to try to facilitate your or anyone
20 else's reading of this document of where I got this
21 information. So that was recently.

22 Q. Okay. Was --

23 A. Last week.

24 Q. What you did was you made this document

1 yourself sometime prior to your deposition, and I
2 forget when that was. November 8, 2004?

3 A. Mm-hmm.

4 Q. And do you recall how much prior to that
5 deposition you had completed this document or
6 generated this document?

7 A. My estimate is two to four weeks before.

8 MR. McNALLY: That's fine. All you can
9 tell us is what you recall. Don't worry.

10 A. It might be on my computer when I generated it.

11 Q. I take it you have a home computer?

12 A. I do.

13 Q. Have you always had a home computer?

14 A. Since my parents passed away. I used some of
15 the money to buy a home computer. So that was when I
16 was at Family Court. This is a different one where my
17 mother passed away in '92. So since '93 or '94 I had
18 one.

19 Q. And my understanding is, from reading the last
20 page of this document, which is your explanation of
21 how you compiled this document, that you would go to
22 the various other documents that we have gone through
23 and you would generate numbers for that or you would
24 use those numbers. You use the Family Court file

1 number. You looked at the date it was assigned and
2 then the mediation date, correct?

3 A. Right.

4 Q. And at the right side is paperwork due from
5 EBL, correct?

6 A. Yes.

7 Q. That's you, EBL?

8 A. Yes.

9 Q. Then you would put a yes or no or a question
10 mark depending on what the response was?

11 A. Yes.

12 Q. You notice the very first case on the first
13 page? It's ancillary custody, correct?

14 A. Yes.

15 Q. And it's marked as number 1, and it's date
16 assigned is May 2nd, 1994.

17 A. Yes.

18 Q. I didn't find any, going through this document,
19 that were earlier assigned than May 2nd, 1994, is that
20 correct?

21 A. I do not remember. I trust your judgment. It
22 looks like you're right.

23 I believe that's correct. I hope I've
24 done it correctly. I've done it as best I could.

1 Q. Do you have an explanation for why that is, why
2 is it there appears on this caseload list that you
3 generated nothing earlier than May 2nd, 1994?

4 A. Because I had been working very diligently to
5 bring my caseload up-to-date, and so, while some of
6 these had been mediated already as of October 28th and
7 were still my -- would still show as open, there was
8 nothing for me to do. You know, if a stipulation was
9 pending, I had written this letter and it was in the
10 file to the attorneys giving them a date by which they
11 had to have a stipulation in or asked for another
12 mediation. So that my work was complete until I heard
13 from the attorneys like in this case.

14 Q. In 1994 did somebody at Family Court help you
15 with your caseload?

16 A. Yes.

17 Q. By reducing it?

18 A. Yes. At the beginning, in January of '94,
19 there was a change. It was in January of -- it may
20 have been in December of '93. There was a change in
21 my supervisor, and I had asked my earlier supervisor
22 for similar help and she wasn't able to do it for me.
23 But David Weiss had been my co-mediator, and I said to
24 him when he became my supervisor, may I sit in on two

1 or three mediations with you and to try to see how you
2 get the paperwork done, you know? Now, he would be
3 behind too. I mean, that just happens. But you know,
4 you catch up. You can't always do exactly within the
5 hour and a half or 45 minutes you have.

6 But I sat in with him and got ideas. I
7 hadn't thought of ways to structure my own activities
8 during the mediation so that I wouldn't have to do so
9 much after the mediation to complete a case. That was
10 wonderful help. I was reviewing -- if I may say, by
11 June -- I went through the month of June and August
12 yesterday myself just to see how I was doing, and in
13 most cases, not all, but in most cases, if it was --
14 if there weren't outside reasons beyond my control, I
15 was getting most of that paperwork done on the day of
16 the mediation, which is very different. And I was
17 also -- I noticed in June, for instance, my
18 supervisors didn't know how to resolve some of these
19 things that were old because they didn't fit the
20 normal -- if this happens, you do that.

21 But we had a master. The Court had given
22 us a master. Herlihy was assigned. She's a
23 commissioner now, but they were called masters then.
24 And I went to her, and I said, I have these kind of

1 situations and she would tell me of a court rule that
2 I hadn't been taught about and this is how you could
3 resolve it or another way to resolve it and close it
4 with myself.

5 So like I remember -- and you don't have
6 the organization I have, of course. Mine I've
7 reorganized. But in June there were a whole lot of
8 those each month. I was getting information. So
9 Master Herlihy and David Weiss with helping me --
10 David was helping me learn how to keep up.

11 And also in January of '94, I had learned
12 I had ADD. I'd never known that. The Delaware
13 Department of Labor representative, EEOC
14 representative suggested I get evaluations about why
15 this might be I have trouble keeping up with my
16 paperwork. I had that problem the whole over 20 years
17 I worked for Family Court.

18 Q. I'm trying to put a time limit on this.

19 A. Sure.

20 Q. When did Mr. Weiss become your supervisor?

21 A. As I said, it was either the end of '93, like
22 in December, or the beginning of '94.

23 Q. Did you like him as a person?

24 A. Yes.

1 Q. Did you think he was honest and straightforward
2 with you?

3 A. No. I don't think -- thought it was his job to
4 keep -- I mean, he was a supervisor. So it was not
5 his job to tell me what he had been told he was to do
6 about me.

7 Q. Well, let me ask you this. Prior to him
8 becoming your supervisor, had he been a mediator
9 himself?

10 A. Yeah. He was a federally funded mediator. He
11 just handled the support cases from DCSE.

12 Q. At some point he was promoted --

13 A. Yes.

14 Q. -- to supervisor?

15 A. Mm-hmm.

16 Q. And was he open with you? Did he treat you
17 honestly?

18 A. He -- you see, his supervisor -- what I mean
19 about not being open is he's told things about how
20 he's to act with me, that he is not supposed to tell
21 me. I was a supervisor, so I know that. But in terms
22 of -- I asked him for the help of letting me sit in on
23 some mediations and give me some ideas, tell me -- let
24 me see what you are doing to keep up with your

1 paperwork. In that way, especially at the beginning,
2 he was very fair. Later he -- you know, he wouldn't
3 meet with me. And he wasn't always fair. He knew I
4 needed certain accommodations. They had it in
5 writing, and he would put it in writing. He would put

6 me down for asking for a change of something because
7 of my need for accommodations. And then he would put
8 it in writing that -- complaining that I had even
9 asked.

10 Q. Well --

11 A. As an example.

12 Q. Okay. As an example.

13 Had they attempted to do things to make
14 your job easier so you could do your job? 1994 I'm

15 talking about.

16 A. Dr. Erb did the educational evaluation. They
17 gave me some colored files. Kathi Donofrio. That was
18 the only thing -- no. Two things they did that I
19 remember of what Dr. Erb recommended. The one was
20 they gave me some colored manila folders because they
21 recommended that, and the other was Mr. Klosiewicz
22 showed me how I could buy something to buffer out
23 noise. That was all of Dr. Erb's recommendations that
24 they did. You're asking -- your question is, did they

1 do anything to help me?

2 Q. Mm-hmm.

3 A. Kathi Donofrio closed a few cases, six or more.
4 I remember I saw the note from her recently that I
5 used in my statistics and told me how they were
6 resolved.

7 You're talking '94, so it's not Ana
8 DePaul. David closed 18 easy dismissals. Easy
9 meaning petitioner didn't show. All you have to write
10 is the information, petitioner didn't show up, and the
11 notice was sent to the address petitioner provided.
12 That was a help. But it was only, you know, 24 cases.

13 Q. Were you relieved of a 170-case backlog?

14 A. In '94?

15 Q. Mm-hmm.

16 A. No. Not that I remember.

17 Q. Were you relieved of a large backlog?

18 A. Not that I remember. Not in '94. I may be
19 wrong, but I do not remember that in '94.

20 Q. You indicated you were given color-coded files?

21 A. Just colored files like those, but in color.

22 Q. You were told about a noise buffering system?

23 A. Yes.

24 Q. Did you get that?

1 A. No, because mediators had enclosed offices, and
2 I was able just close my door. Her issue was I was so
3 easily distracted that I found -- I couldn't afford
4 what he showed me. It was nice. He showed me. But I
5 was able to cut out noise in another way.

6 Q. Were you excused from performing custody
7 investigations?

8 A. I did not perform any in '94. I don't know how
9 many or even -- I don't think there were many referred
10 to mediation. I didn't see on any -- you know, those
11 calendars you showed me, there weren't any that the
12 other mediators were given a day to work on a custody
13 mediation.

14 Q. Were you excused from emergency mediations
15 during this period of time?

16 A. Not to my knowledge. If I had, for instance,
17 if I had on my calendar -- if I knew ahead of time
18 that things were resolved, I would go at the beginning
19 of the day and tell whoever was in charge, David or
20 whoever he placed in charge, that I had this slot
21 open. And if they needed me to cover, I was available
22 to do it and I did it.

23 Q. Were you excused from holding a mediation
24 hearing if it had to be rescheduled?

1 A. No. I don't understand the question. I'm
2 sorry. Maybe I better -- before I say no --

3 Q. In other words, if they ever had to reschedule
4 one from the initial mediation date --

5 A. Mm-hmm.

6 Q. -- were you excused from having to hear it, the
7 rescheduled one?

8 A. Usually the mediators heard their own, and I
9 did -- when I mentioned to you that on the handwritten
10 calendar could be my writing, I rescheduled my own
11 mediations. I did all the notices. I prepared the
12 whole file.

13 Q. Were you given additional computer training
14 during this period?

15 A. I was given -- I don't remember if it was in
16 '94 or '93. I certainly was given computer training,
17 yes. This was very helpful.

18 Q. In '94 were you permitted to flex your time?

19 A. I do not remember the date, but yes, at some
20 point, mm-hmm. But it wasn't the way I wanted it. It
21 was what they gave me. So it was -- they called it an
22 accommodation. It really wasn't.

23 Q. But they allowed you to move your work hours to
24 some degree?

1 A. Correct. For 15 minutes, yes. And we made --
2 I made sure that all of my first mediations were
3 scheduled to start at 8:45 so the people knew once
4 they gave me that.

5 Q. If you had mediations scheduled for a
6 particular day and you were not able to go to work
7 that day, how would they be taken care of? How would
8 those people be taken care of that were scheduled for
9 that day?

10 A. That was up to the supervisor. They would look
11 and see. Some of them I may have already resolved.
12 Otherwise somebody else would mediate it or the
13 supervisor would have the people called and asked not
14 to come in and rescheduled it that moment.

15 Q. Do you recall if Mr. Weiss had to take over
16 some of your cases for you because you were absent
17 from work, do you recall that?

18 A. I remember seeing his name like when I reviewed
19 some cases yesterday. I saw his name once. I mean,
20 there were times when I was ill. I did have two
21 abscessed teeth. I changed one of the dentists under
22 the state plan, and he pulled two teeth. I have bad
23 teeth. And so I was working at the end for a period
24 of months with two abscessed teeth that were getting

1 more and more abscessed.

2 MR. McNALLY: The question was, did David
3 Weiss take over some of your cases when you weren't
4 there?

5 THE WITNESS: Or he assigned them to
6 somebody else or he cancelled them and rescheduled
7 them.

8 BY MR. NIEDZIELSKI:

9 Q. I'm going to hand you a set of documents and
10 ask you to look at them first, and then I will ask you
11 just some brief questions.

12 The ones I'm going to ask about, you see
13 they are stamped at the bottom?

14 A. Yes.

15 Q. JENK 03 through --

16 A. It was 001 through --

17 Q. 012, correct?

18 A. Yes.

19 Q. Now, 003 through 004 --

20 A. Yes.

21 Q. -- is that your handwriting?

22 A. Yes.

23 Q. You filled those in?

24 A. Yes.

1 Q. That was all your --

2 A. When I first went to him, March 12th of '93 it
3 looks like. I mean, that's the date I put down.

4 Q. Is this the new dentist you're talking about?

5 A. Yes.

6 Q. Do you still go to this dentist?

7 A. No.

8 Q. Who are you presently treating with for -- do
9 you go to see a psychiatrist?

10 A. Yes.

11 Q. What's his name?

12 A. Neil, N-e-i-l, Schecker, S-c-h-e-c-k-e-r, M.D.

13 Q. And where does Dr. Schecker practice?

14 A. At 111 North 49th Street -- I'm doing this out
15 of my head -- in Philadelphia, PA, 19139.

16 Q. And how long have you been seeing Dr. Schecker?

17 A. I transferred to him at the end of February of
18 '92.

19 MR. McNALLY: '92?

20 THE WITNESS: Sorry. Thank you. 2002.

21 Thank you.

22 MR. McNALLY: '92 didn't sound right.

23 THE WITNESS: That's exactly right.

24

1 BY MR. NIEDZIELSKI:

2 Q. How frequently do you see Dr. Schecker?

3 A. Usually three times a week.

4 MR. NIEDZIELSKI: I don't believe I've
5 ever seen the records from Dr. Schecker.

6 MR. McNALLY: I can't remember, but I
7 don't know we have any records. I don't think I have
8 subpoenaed records from Schecker.

9 THE WITNESS: I wasn't seeing him at the
10 time I worked.

11 BY MR. NIEDZIELSKI:

12 Q. What was the purpose? Why did you prepare this
13 document marked as Lieberman 1?

14 A. Because I -- okay. First of all, there had --
15 the last statistics I had to do, they were done at the
16 end of the month, and they were due on either the 3rd
17 or 7th of the next month. So they made me leave
18 Family Court on October 28th of '94. So October's had
19 not -- statistics not been done. Okay?

20 In October, they gave us an extra day to
21 work on backlog or whatever else. And so I was able
22 to go back on the old cases, go down to the file room.
23 I spent the day in the file room with these old cases
24 to make sure that the case was really done with me. I

1 never wanted a client to fall through the cracks. And
2 because I did that and got that documentation and they
3 gave us the extra day and I used that way, I knew
4 that, as of October 28th, this is what I had left.

5 Q. No. What I'm asking you is, my understanding
6 was you prepared this document sometime four to three
7 weeks prior to your deposition of November 8th, 2004.

8 A. Mm-hmm.

9 Q. Why did you prepare it?

10 A. Because part of what David Weiss said in his
11 October 28, '94, memorandum was incorrect. And so I
12 wanted to provide documentation of what was correct.

13 MR. NIEDZIELSKI: Would you mark this as
14 the next exhibit?

15 (Lieberman Deposition Exhibit 2 was marked
16 for identification.)

17 BY MR. NIEDZIELSKI:

18 Q. Is this the document you that you are talking
19 about that you said David Weiss gave you on October
20 28, 1994?

21 A. Yes.

22 Q. You indicated the reason that you prepared
23 Lieberman 1 was to show that this document was
24 incorrect?

1 A. There were certain things in this document were
2 incorrect.

3 Q. Okay.

4 A. To show that I was not behind in my caseload.

5 Q. Let me ask you this. In the first paragraph
6 says, "This memorandum will serve as notice that I'm
7 recommending you be dismissed from state employment
8 for your continuing pattern of unreliable attendance."
9 Is that what it says?

10 A. That is what it says.

11 Q. And he goes on to document a number of
12 occasions where your attendance has not been good.
13 You agree with that?

14 A. I disagree because we do not have the specifics
15 of what this refers to. I don't have -- for instance,
16 the first sentence in the second paragraph, "You have
17 been late to work on 13 occasions." I had asked on
18 October 28th of Mr. Klosiewicz when the information I
19 was asking for certainly listed -- I wanted a copy of
20 each of the sign-in sheets that we had to sign in
21 because I was honest on those sign-in sheets of the
22 time I arrived. I wanted specifics because I believe
23 that was incorrect. I did not keep copies or make
24 copies of those because I didn't know this was going

1 to happen and I would need them. This, on October
2 1st, came in and did the physical inventory of pending
3 cases in my office. I've asked, reasked, Mr. McNally
4 asked in discovery request for this information.
5 We've understood it's not available. These cases that
6 he looked at could have been ones that were resolved,
7 and he couldn't tell it because it was hard for me --
8 I have trouble with different steps of different
9 things. There was one book we had to sign out court
10 files on. Okay? So if other mediators were waiting
11 to use that one book, the files would stay in my
12 office because then I do get distracted and that
13 wouldn't be a priority. I knew that case was handled.
14 I would be working on other cases.

15 And I also did not say that, as of October
16 1st, I was up-to-date. I say on October 28th I was
17 up-to-date except for certain cases I don't know
18 about, and the four cases I had -- four cases that I
19 mediated on the 27th were complicated. They still had
20 some paperwork to do.

21 Q. Well, how many times do you believe that you
22 were late to work from July 1st to October 28th, 1995?

23 A. I don't know.

24 Q. Do you believe you were late to work five

1 times?

2 A. I can't estimate. Because also, when I look
3 through -- remember the ones, the typed calendars,
4 where they are written in? They were jumping to -- I
5 was allowed to arrive at work at 8:45. I could then
6 say to the people who were there, "I'm here. I'll be
7 with you, two minutes, five minutes." Okay? They
8 were jumping. That's why I say I don't think they
9 were being totally honest. I think they had their
10 agenda. They were being told to get rid of me.

11 So they were jumping and assigning cases
12 to another mediator or David would take it when it was
13 wasn't necessary. Their notice had been for 8:45.
14 That's when I was allowed to appear in the court. And
15 so they had another agenda, you know, and without the
16 specifics and without those --

17 Q. Well, let me ask you this.

18 A. -- copies, I won't agree to that.

19 Q. Between October 2nd and October 28th, 1994, you
20 don't know how many times you were late?

21 A. That's correct.

22 Q. But you were late for work during that period
23 of time?

24 A. I don't know if, how much at all I was late.

1 Q. What you're saying is you don't know how many
2 times you were late, correct?

3 A. And don't know that it's what they said.

4 Q. Now, it indicates that in 1993 your EPPA --
5 which is an evaluation, correct?

6 A. Yes. Can you -- oh, you're jumping to the next
7 paragraph. Okay.

8 Q. It says your 1993 EPPA indicates your chronic
9 tardiness as an ongoing problem.

10 A. Mm-hmm.

11 Q. In fact, your EPPA does say that, does it not,
12 for 1993?

13 A. It may say those words. I can't remember.
14 Tardiness is certainly mentioned, yes.

15 Q. And David Weiss was not your supervisor for the
16 1993 EPPA, was he?

17 A. No.

18 Q. Who was it?

19 A. It was Ana DePaul, but Kathi Donofrio, now
20 Weiss, is the -- was the deputy director, so it was
21 signed by both of them.

22 Q. It indicates in the next paragraph that you
23 were given a formal reprimand on December 6, 1993,
24 regarding your persistent tardiness?

1 A. That may be correct. I can't remember.

2 Q. And it indicates that your former supervisor,
3 Ana DePaul cited seven latenesses in the month of
4 November 1993 alone. Do you recall that?

5 A. I don't remember exactly what she said.

6 Q. It indicates the next page, the second
7 paragraph that March 14, 1994, you were suspended
8 without pay for three days for failure to process
9 cases in a timely manner, again, due in large part to
10 your chronic attendance problems, is that correct?

11 A. That was the order, but if you go on, it wasn't
12 imposed because they finally listened to -- I had
13 filed a -- my first complaint with the Delaware
14 Department of Labor because they had been given --
15 they had done this. And I didn't file the first one
16 where they took away the day. They were not listening
17 to I needed accommodations.

18 By -- this was -- he did -- Randy
19 Williams, at that time he was New Castle -- Director
20 of Operations for New Castle County, wrote this, but
21 this -- this is not -- okay. He wrote it, but then
22 they didn't -- they stayed -- that was just hanging
23 over my head the rest of the time I worked there
24 because I had filed the complaint, and they -- I

1 believe Randy put -- I can't remember his exact words,
2 but that they needed to look at what all the
3 information I had given them in the hearing before
4 March 14th, '94, in the hearing before whenever the
5 hearing was for this.

6 I had given them documentation from
7 doctors of what I needed and that it affected these
8 things.

9 The other thing is that they keep talking
10 about --

11 MR. McNALLY: Excuse me. There's no
12 question pending.

13 THE WITNESS: Thank you.

14 BY MR. NIEDZIELSKI:

15 Q. You indicate that the three-day suspension was
16 stayed, correct?

17 A. Yes. Mm-hmm.

18 Q. And at that point, did the people from Family
19 Court write to your various health care providers
20 requesting information from them regarding
21 accommodations for you?

22 A. I didn't know that at that point if they did or
23 not.

24 Q. Do you now understand that to be the case?

1 answer it?

2 Q. I think my question was that you now understand
3 that Family Court sent out letters to your health care
4 providers asking about accommodations, correct.

5 A. At some point, yes.

6 Q. You indicated in your testimony that certain
7 changes were made for you?

8 A. No.

9 Q. You didn't testify to that?

10 A. No.

11 Q. You didn't testify you got color-coded files?

12 A. Yeah. I'm saying that when they heard -- when
13 they looked at what the doctor said, they didn't
14 listen to it.

15 Q. Well, do you understand that the need is for
16 reasonable accommodations? Do you understand that?

17 A. And when the doctor suggested a reasonable
18 accommodation, they did not comply.

19 Q. In any event --

20 A. Except for those two little things. And
21 earlier than that they had given me use of a very old
22 typewriter before we had computers, and that was a
23 help because it's easier for me to type. I have so
24 many problems in my hands. Easier for me to type.

1 They had done that. But then they took that away.

2 Q. This memo goes on to document that, in fact,
3 you had problems with attendance in '92, correct?

4 A. Yes.

5 Q. 1990 you had problems with attendance?

6 A. Yes. It does not talk about the information
7 that I had given them from doctors about why this was
8 occurring as I learned it from doctors.

9 Q. And what was your understanding for why you
10 were tardy?

11 A. Okay. I had my psychiatric diagnosis was
12 incorrect for 30 years. It's very hard to diagnose

13 what I have. And because of being incorrect
14 diagnosis, I was put on medications, one of which was
15 lithium, making me have bouts, horrible bouts of
16 diarrhea each morning. And that was affecting my
17 ability to get to work.

18 In '94, in the end of March of '94, my
19 correct diagnosis was expected which caused -- called
20 for my not being on that medication at all.

21 Q. In March of '94?

22 A. Yes.

23 Q. That problem stopped, then, in March of '94?

24 A. It didn't totally stop it. I wasn't taking the

1 medication until the end of May or in June.

2 Q. Of '94?

3 A. But it decreased a whole lot when I wasn't on
4 lithium, yes.

5 Q. If that's true, the lithium was the problem?

6 A. Lithium was part of the problem, a big part of
7 the problem, and the stress of how Ana DePaul handled
8 the unit and reacted to me was another part of the
9 problem.

10 Q. But I thought Ana DePaul was before December of
11 '93?

12 A. Right.

13 Q. And I thought that the problem you were having
14 with diarrhea was from lithium?

15 A. That's a big part of it, not all of it, yes.

16 Q. You were taken off the lithium by June of '94?

17 A. I think it was then. I would have to look up
18 the exact date.

19 Q. And in this memorandum, Mr. Weiss is asking you
20 or informing you that you've been late to work on 13
21 occasions since July. That's in the second paragraph
22 of the first page.

23 A. And I can't verify that.

24 Q. He goes on to say in that paragraph, "On

1 Thursday, October 6, you phoned at approximately 8:30
2 a.m., and stated you would be late as a result of
3 having spent all night at Justice of the Peace Court
4 Number 11," is that true?

5 A. Yes.

6 Q. "I covered your 8:45 case, and you arrived to
7 work at 10:00 a.m.," is that correct?

8 A. Yeah. I mean, he took one situation and wrote
9 out everything specifically that happened and that I
10 said and put it out of context.

11 Q. Is it accurate what he's saying here, though?

12 MR. McNALLY: I'm sorry. The question
13 refers to the fact that --

14 Q. "On Thursday, October 31st, you phoned in at
15 approximately 8:30 and states you would be late as a
16 result of having spent all night at Justice of the
17 Peace Court Number 11."

18 A. Yes.

19 Q. "I covered your 8:45 case, and you arrived to
20 work at 10:00 a.m."

21 A. Mm-hmm.

22 Q. "You did not complete your 10:00 o'clock case
23 in time to take your 11:30 case. Another mediator
24 had to cover."

1 A. Do I not know if that's true. I know that he
2 made -- had another mediator cover. I don't know that
3 it's true that I couldn't have covered it. Certainly
4 mediators would certainly walk out a few minutes
5 later. They were looking for reasons. They were
6 building a case against me. It is true that, for
7 whatever reason, I had been up all night going to the
8 Justice of the Peace Court for a Commonwealth action
9 that had occurred that was a continual problem, and I
10 finally had witnessed something that would help. And
11 that may have been a wrong choice. Okay? Looking
12 back.

13 Q. I'm just asking you if that was accurate. Is
14 that accurate?

15 A. Yeah. Well, that piece is accurate. Whether I
16 couldn't have handled my 11:30 case, they were -- he
17 was jumping in certainly by -- what date was it? Of
18 this -- October 6.

19 He was already -- I was looking yesterday
20 at June and August. He was jumping the gun and
21 assigning the case to be able to say when they -- I
22 had this system with the person who was the
23 receptionist of calling them and telling them
24 whatever. So that they were always available at the

1 beginning of the day if there was a problem, and
2 that's not here.

3 Then on Tuesday, October 11, phoned in
4 sick at 1:00 o'clock.

5 MR. McNALLY: He hasn't asked you about
6 that.

7 THE WITNESS: Okay. I'm sorry.

8 Q. It says, on Tuesday, October 11th at
9 approximately 8:30 a.m., you phoned in sick.

10 A. Yes.

11 Q. At 1:00 o'clock p.m. you phoned again and left
12 a message that you were going to the dentist and then
13 planned to walk your dog. Did you do that?

14 A. That was switched. I was just giving -- he
15 wrote in all the specifics. I was saying I wasn't
16 reachable. I had called in sick. And I called in
17 again to say, "You wouldn't be able to reach me." I
18 didn't have a cell phone. You wouldn't be able to
19 reach me because I have to walk my dog and then go to
20 the dentist. I had abscessed teeth. Yes.

21 Q. On Wednesday, October 12th and Thursday,
22 October 13th, you phoned in sick?

23 A. That's correct. He still wasn't -- he put me
24 on the antibiotic. I cannot actually read the

1 documents from Dr. Jenkins, but at some point he
2 pulled the two wrong teeth. I had four teeth left.
3 He was going to leave two to attach to a plate. And
4 it ended up he pulled -- and I told him they were the
5 good ones. He pulled the wrong ones. I was very ill,
6 and he put me on antibiotic and verified -- he signed
7 a note that I had to be out of work. I was very ill.

8 MR. McNALLY: Okay. You've answered that
9 question.

10 THE WITNESS: Okay.

11 BY MR. NIEDZIELSKI:

12 Q. Now, in a typical day would they schedule
13 mediations at certain times throughout the day?

14 A. Yes. You've seen the schedule.

15 Q. What were the times generally? What would they
16 be?

17 A. For me, after we reached agreement, it was
18 8:45. Other people it was 8:30. 10:00 o'clock.
19 11:30, 1:30, and 3:00 if that's my correct
20 recollection.

21 Is that five? Yes.

22 Q. Was that for you?

23 A. Just everybody else had 8:30 instead of 8:45.
24 I had 8:45 and then 10:00.

1 Q. Was everybody else 8:30 then 10:00?

2 A. Yes. That I know of.

3 Q. And 11:30?

4 A. That I saw, mm-hmm.

5 Q. If a mediator is not to work on time at 8:30,
6 then what happens to the people that are there for
7 mediation?

8 A. I don't know what -- I'm not privy to what was
9 done with all the cases.

10 Q. No. No. What I'm not saying is, if a mediator
11 is not at work on time at 8:30 and they have a
12 mediation, what happens to that mediation?

13 A. I assume that -- either -- if there's somebody
14 else like me -- and I did this too, but you wouldn't
15 see it on my caseload because it stayed on the other
16 mediator's caseload. If I had told the supervisor I
17 was available because mine was done, I had that hour
18 and a half and I could take an mediation, they might
19 transfer it to me.

20 Q. If an employee, a mediator doesn't come to work
21 on time or is not available for a start of a mediation
22 session then some other mediator would probably have
23 to take it, correct?

24 A. Unless the supervisor or the receptionist had

1 heard from the mediator that they were down stairs
2 walking up the steps, coming up stairs.

3 Q. But my point is, it was important for mediators
4 to be to work on time, is it not?

5 A. Yes.

6 Q. And it's important, to the extent they can,
7 that they be present during scheduled days?

8 A. Correct. Oh, yes.

9 Q. I mean, would you say that your caseload in '94
10 was heavy? Was it a large caseload?

11 A. In '94, but the caseload -- my caseload was
12 similar to the other state-funded mediators except
13 that on two afternoons a week I had it preapproved
14 that I would leave. And I think it was one day it was
15 a half hour early. So that day I would be given like
16 a guardianship which usually was shorter. So that --
17 what was the date and time -- 3:00 o'clock I think.
18 So I'd be done by 4:00 and could leave.

19 On the other day, I can't remember if it
20 was three-quarters of an hour. There was one day a
21 week that I had four mediations instead of five,
22 except that, on November 17 of '93, I have a memo that
23 you've been given many times, or I suspect, from me.
24 It was a memo from Kathi Donofrio to me. I had been

1 asking for the accommodations of let me make up the
2 work. The amount of time for that hour and whatever
3 it was -- it was less than two hours a week. And what
4 she said was -- and not have to use my sick time.
5 That's an accommodation under the EEOC guidelines for
6 people with psychiatric illnesses that I had given the
7 Court, that I had gotten from state personnel.

8 She wrote that she had discussed it with
9 Mr. Pollard and Mr. Williams and they agreed that, if
10 I performed as many mediations as the other mediators,
11 then they would grant me -- and they suggested how
12 like Friday was workday. They suggested I schedule
13 another mediation, which I often did.

14 MR. McNALLY: Excuse me, Bernice. The
15 question was, was your workload heavy in 1994?

16 THE WITNESS: It was equal to the other
17 state-funded mediators. I was trying to explain how.

18 BY MR. NIEDZIELSKI:

19 Q. And then you also explained in your response
20 that there were differences, though. Your schedule
21 was varied, was it not? You indicated you had a
22 different schedule. Sometimes you were allowed to
23 leave early at 4:00?

24 A. Yes.

1 Q. That wasn't the case for the other mediators,
2 though, correct?

3 A. They could have if they had a doctor's
4 appointment. It's just that my doctor's appointments
5 were standard.

6 Q. So they made that schedule change for you so
7 you could go to your doctor's appointment?

8 A. Not really because anybody could ask off for
9 leave. It was like this was preapproved time for me
10 to be away. Other people took vacations. Went to
11 doctors. Went to school for the children. They
12 allowed that.

13 Q. What I'm saying is, in your particular case,
14 they made it as part of your normal schedule?

15 A. That's how I chose to do it. Everybody else
16 got the same accommodation if they asked for it
17 because we were afforded an amount of leave as state
18 personnel.

19 Q. Now, this memo that we have been discussing
20 which is Lieberman 2 on the last paragraph, it has
21 conferences scheduled for November 2nd, 1994, at 3:00
22 p.m. Do you see that?

23 A. Yes.

24 Q. You never went to that conference, did you?

1 A. No. I asked to be excused per my doctor -- not
2 my doctor, the doctor I had at the time.

3 Q. And that hearing never occurred, did it?

4 A. No.

5 MR. NIEDZIELSKI: That's all the questions
6 I have.

7 MR. McNALLY: Okay. Thank you very much.
8 We, of course, will read and sign.

9 (Deposition ended at approximately
10 10:25 a.m.)

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AFTER IT HAS BEEN
COMPLETED AND SIGNED
BY THE DEPONENT.

State of Delaware)
)
New Castle County)

CERTIFICATE OF REPORTER

I, Ana M. Calligan, Registered Merit Reporter and Notary Public, do hereby certify that there came before me on the 10th day of July, 2005, the deponent herein, ELBERTA LIEBERMAN, who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions asked of said deponent and the answers given were taken down by me in Stenotype notes and thereafter transcribed by use of computer-aided transcription and computer printer under my direction.

I further certify that the foregoing is a true and correct transcript of the testimony given at said examination of said witness.

I further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

Ana M. Calligan, RMR
(Certification No. 186-RPR)
(Expires January 31, 2008)